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OFFICE OF PETITIONS

In re Patent No. 6,799,144 :
Issue Date: September 28, 2004 :
Application No. 09/894,244 : DECISION ON PETITION
Filed: June 27, 2001 :
Attorney Docket No. 12583.2USC1 :

This is a decision on the petition under 37 CFR 1.378(c), filed August 09, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (1) and (2) above.

In regard to item (1), the petition indicates that "Gigamax Technologies, Inc. only recently completed purchase of, and clear title to, the assets of Wavecrest Corp. after entering to a conditional purchase agreement on March 03, 2009." It is thus not clear if the person signing on behalf of Gigamax Technologies, Inc. is authorized to make this statement required in (1) above, as the patent had expired prior to its acquisition by Gigamax Technologies, Inc.

In regard to item (2), Petitioner should note the total amount maintenance fee that is due (for a large entity) is \$980 and a surcharge of \$1640 is also required for unintentional delay. Petitioner has paid \$2130 for the maintenance fee. The balance of \$890 (that includes the \$400 fee for a renewed petition) is now due.

The Power of Attorney submitted with the petition on August 09, 2010, is not accepted. The Power of Attorney was signed by Charles Olson, acting on behalf of the assignee – Gigamax Technologies, Inc. However, the statement under 37 CFR 3.73(b) included therewith is not acceptable since neither the documentary evidence of a chain of title to the assignee nor a statement specifying the correct reel/frame where such evidence is recorded in is included therein. Therefore, the Power of Attorney will not be accepted at this time.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
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 401 Dulany Street
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The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to Tredelle Jackson at 571-272-2783.


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